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STUDENT REPORT

CALL FOR A POSSE -
THE AIR FORCE RESPONSE

MAJOR GLENN H. TEGMEYER

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20. ABSTRACT (Continue on reverse side if necessary and identify by block number) The article deals with Public Law 97-86, signed by President Ronald Reagan on 1 December 1982, which effectively ended 105 years of military noninvolvement in civil law enforcement. Prior to the passage of this new law, the Posse Comitatus Act of 1878 prohibited the military from assisting civil authorities in their enforcement duties. The history of the new law, specific areas of Air Force interface with the civilian community, and a summary of the first year of operations are presented.		

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PREFACE

This article provides a brief analysis of the new Air Force program to aid civil law enforcement. This program has a major impact on the traditional role of the Air Force in this area and on relationships between military and civilian authorities. Although the Air Force has done much to educate its own people about this new mission, the article is directed to the civilian law enforcement community to fill a perceived information void. Subject to clearance, the manuscript will be submitted for consideration to Police Chief Magazine, a publication of the International Association of Chiefs of Police.

The author gratefully acknowledges the cooperation and assistance of Captain Robert M. Collins of the Law Enforcement Division, Air Force Office of Security Police; Lieutenant Colonel Evans W. Moore of the Office of the Inspector General, Headquarters, United States Air Force; and Major Richard S. Hefner of the Directorate of Resident Operations, Air Command and Staff College for their help in researching this article. A special word of thanks goes to Mr. John C. Smith of the Air Command and Staff College for lending his literary skills to this effort.

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ABOUT THE AUTHOR

Major Glenn H. Tegtmeyer was commissioned in the United States Air Force in June 1971 after obtaining his bachelor's degree in business administration from Lowell University in Massachusetts. He attended the Security Police Academy at Lackland Air Force Base, Texas prior to his initial assignment as law enforcement operations officer at Charleston Air Force Base, South Carolina. While at Charleston, he obtained his master's degree in public administration at the University of Georgia. He was next assigned to Thule Air Base in Greenland as its chief of security police. This was followed by an extended tour at Hancock Field in Syracuse, New York as the base chief of security police. During this time, he attended the prestigious Federal Bureau of Investigation's National Academy, where he authored an article entitled "Radio Paging - A Communications Savings" in the March 1979 edition of the FBI Law Enforcement Bulletin. Prior to his present assignment as a course officer at the Air Force Air Command and Staff College, Major Tegtmeyer was assigned to the Office of the Inspector General, Headquarters, United States Air Force in Washington, D. C. where he implemented the new Air Force program to assist civil law enforcement officials.

CALL FOR A POSSE - THE AIR FORCE RESPONSE

The South Florida Task Force established by President Ronald Reagan on 28 January 1982 is perhaps the largest "posse" ever formed. Under the direction of the Vice President, it originally addressed drug-related criminal problems in the southern area of Florida, but drug smugglers soon diverted many of their routes into other border states. The President then expanded the task force in March 1983 to form the National Narcotics Border Interdiction System (NNBIS). This system coordinates national efforts to interdict the flow of illegal drugs into the United States by land, sea, or air and includes Federal, state, and local enforcement agencies and a number of activities in the Department of Defense (DOD). The inclusion of the Department of Defense as a member of the "posse" marks the end of more than a century of military detachment from civil law enforcement.

The Posse Comitatus Act enacted in 1878 made it unlawful for the Army and, later, the Air Force to enforce civil law.¹ Codified in Title 18, United States Code, Section 1385, the act states:

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, wilfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined not more than ²\$10,000 or imprisoned not more than two years, or both.

Posse comitatus has historically referred to the summoning of all able-bodied males to form posses to aid county sheriffs in keeping the peace. A post-Civil War Congress passed the law during the period of reconstruction to prohibit Federal troops from policing elections in the Southern states. The military was guided for 105 years by this legislation until the Department of Defense Authorization Act was passed in 1982.

The President signed the act, Public Law 97-86, on 1 December 1982, and, in so doing, declared "war" on drug traffickers. Both Congress and the President recognized the plight of law enforcement officials and committed the military to support them in combatting the lucrative narcotics trade. Drug smugglers were making enormous profits estimated at almost \$80 billion annually, and they were using some of these profits to purchase equipment often vastly superior to the equipment used against them. This situation and an estimate in 1977 that drug abuse cost the United States economy more than \$16 billion in reduced productivity, especially among young males from 18 to 24, gave added impetus to the new law. In a letter to the DOD conference on Military Support to Civilian Law Enforcement in December 1982, the President wrote:

As your Commander-in-Chief, I commend...your commitment to effective civilian-military teamwork...to eradicate once and for all this criminal activity that threatens our national integrity, general well-being, and our most important treasure: our youth. As many of you know full well, drug traffickers are cruel and cynical enemies, and our determination to defeat them is in a real sense a national security priority.

Armed with this direction and the new public law, the military, specifically the Air Force, entered the "battle" against the enemies of society engaged in illicit drug traffic.

THE NEW LAW

Public Law 97-86 added Chapter 18, "Military Cooperation With Civilian Law Enforcement Officials," to Title 10, United States Code, Sections 371-378.³ Although the new law is commonly labeled a "revised Posse Comitatus Act," it is actually a separate statute that provides exceptions to the traditional interpretation of Posse Comitatus.

Sections 371-373 permit military officials to provide information, equipment, facilities, training, and expert advice to civilian officials.

Section 374 expands the support the military can provide for monitoring and communicating the movement of air and sea traffic. It is particularly useful in combatting illicit drug traffic.

Section 375 prevents direct participation by military personnel in any civilian law enforcement action unless otherwise authorized by law. In particular, interdiction of a vessel or aircraft, a search and seizure, arrest, or other similar law enforcement activity by the military is prohibited.

Section 376 provides that assistance given by the military shall not be allowed to affect the military preparedness of the United States.

Section 377 states that reimbursement may be a condition of assistance.

Section 378 ensures that authorization for assistance by the military will not be construed as preempting assistance under any other law.

Section 375 preventing "direct participation by a member of the Army, Navy, Air Force or Marine Corps" in law enforcement activities has led to some confusion between military and civilian authorities. In the area of search and seizure, for example, use of a military working dog team to search for a lost child and for explosives during a bomb threat or to engage in various other humanitarian activities has always been permitted even before passage of the new law.⁴ But a request from civil authorities for a military working dog team to search for drugs is still illegal under Posse Comitatus. The distinction is that the Air Force can legally engage in emergency actions to prevent loss of life or wanton destruction of public property when civilian authorities are unable to conduct such activities themselves. Similarly, the Air Force can, within the limits of sound reasoning, and incidental to a valid Air Force mission, deviate from an established route, altitude, or duration of an aircraft flight to obtain information for local authorities without violating provisions of the new law prohibiting interdiction or illegal surveillance of an aircraft or vessel.

In Section 376, the concept "incidental to a valid Air Force Mission" governs restrictions on assistance that adversely affects U.S. Military preparedness. Military officials have rejected only a small number of requests under this section. The Air Force recognizes its responsibilities under the new law, but the primary military mission of protecting the nation's security remains paramount.

An additional benefit of providing assistance "incidental" to normal military training or operations is that the requesting agency is not required to pay reimbursement costs. A straightforward loan of military equipment to a law enforcement organization might require reimbursement to the Air Force. Section 377 requires consideration of reimbursement for incremental or marginal costs incurred by the military in providing equipment or services to agencies outside the Department of Defense. Thus far, the overwhelming number of requests for Air Force assistance has not required reimbursement, or the Department of Defense has waived requirements for reimbursement either because the military received tangible training or operational benefits or because waiver does not adversely affect the military mission.

Most of the above provisions are contained in Department of Defense Directive 5525.5 (22 March 1982) providing uniform policies and procedures that govern support activities of DOD agencies. And Air Force Regulation (125-4), "Cooperation With Civilian Law Enforcement Officials," deals with specific service requirements.⁵ In conjunction with the change in public law, these regulations have significantly altered the way the Air Force does business.

THE AIR FORCE ROLE

The Air Force has provided indirect support to civilian law enforcement agencies toward stemming the flow of illegal drugs

into the United States since 1974. Under appropriate agreements, the nationwide Joint Surveillance System maintained by the Air Force and the Federal Aviation Administration has provided radar information requested by the US Customs Service. And customs agents have flown aboard E-3A Airborne Warning and Control System (AWACS) aircraft since 1978. The Air Force has also provided storage space at Davis-Monthan Air Force Base, Arizona, for aircraft confiscated by the Customs Service. It has allowed air operations branches of the Customs Service to use base facilities at Homestead Air Force Base, Florida; MacDill Air Force Base, Florida; Tyndall Air Force Base, Florida; and Kelly Air Force Base, Texas.

Many of the latest requests for Air Force assistance have been made on new and uncharted ground since the law was changed. When one considers the number of continuing prohibitions against military involvement in civil law enforcement, "growing pains" suffered by the new program are understandable. To minimize problems and improve assistance to civilian authorities, the Secretary of the Air Force, in August 1982, established a Civil Law Enforcement Support Steering Group, currently chaired by Ms Karen Keesling, the Principal Deputy Assistant Secretary of the Air Force for Manpower, Reserve Affairs and Installations. Comprised of general officers and members of the senior executive service from major functional areas at Headquarters, United States Air Force, this group coordinates efforts and formulates the necessary new policies in this area. As the Air Force gains

experience and establishes precedents, this group will be phased out and the program will assume the normalcy of other service missions. The Air Force has also assigned expert advisors to each of six NNBIS regional centers (New Orleans, Louisiana; El Paso, Texas; Chicago, Illinois; Long Beach, California; New York, New York; and Miami, Florida). And it has assigned an officer on full-time loan to the NNBIS program office at the White House. These individuals facilitate growing Air Force involvement in the new program.

In the first year of recorded statistics, the Air Force has documented this growth with 221 requests for assistance from civilian authorities.⁶ These requests have ranged from more traditional types of assistance routinely provided in the past, such as support of military working dogs for the US Secret Service and joint training with local law enforcement officials, to more exotic forms of aid, such as providing radar data from balloon-borne radars in the Florida Keys and at Patrick Air Force Base, Florida. Almost all Air Force aircraft or ground-based radar have the potential for incidentally "seeing" objects that may be of interest to civil law enforcement officials. In most instances, however, specific requests are received at the NNBIS regional centers or at individual Air Force installations, and Air Force officials attempt to match these requests with existing resources or planned missions. C-130 rescue and weather aircraft of the Military Airlift Command have flown training missions in support of the drug enforcement community. And B-52 bombers on

routine training flights scheduled by the Strategic Air Command have contributed to the data base on suspected vessels off US shores. As mentioned earlier, AWACS radar aircraft belonging to the Tactical Air Command have also been used extensively to vector aircraft of the Customs Service to intercept suspicious aircraft along the nation's southern borders and over the Gulf of Mexico. Numerous Air Force aircraft from other major commands have also played significant roles in the overall effort.

Though not directly related to recent changes in the law, operations in the Bahamas are excellent examples of the cooperative effort to stem the flow of illegal drugs into the United States. On 1 May 1983, two Air Force UH-1 helicopters with crews and support personnel arrived in the Bahamas as part of a Bahamian assistance team. This operation came in response to an urgent request from the NNBIS program office at the White House and was based on a joint emergency determination by the Secretary of Defense and the US Attorney General. The helicopters provide transportation assistance to the Drug Enforcement Administration in its efforts to counter the transshipment of drugs to the United States through the Bahamas. Cooperation between the Air Force, the Drug Enforcement Administration, and the Bahamian national police has produced an impressive record of drug interdictions.⁷ And the balloon-borne radar at Cudjoe Key, Florida is another good example. Early in the program, the Customs Service requested real-time information from this Air Force radar system. The Air Force inventory did

not include the necessary equipment for this task, but the US Navy came to the rescue. Radar data obtained by the Air Force is now passed through Navy equipment directly to a facility of the Customs Service hosted by the Federal Aviation Administration in Miami. These examples reflect the high degree of teamwork that characterizes past and present efforts, and teamwork is the key to the future of the program.

THE FUTURE

Cooperation between the Air Force and civil authorities will become more commonplace with several initiatives currently pending. In addition to the agreement with the Customs Service for access to radar information, the Air Force has concluded a memorandum of understanding to assist the US Coast Guard, and it is presently negotiating a memorandum of agreement with the Federal Bureau of Investigation for emergency airlift support. The Department of Defense has also selected the Air Force as the lead agency to develop a secure communications system for NNBIS air operations. In still another example of multiagency collaboration, the Air Force, the Navy and the Department of the Treasury have a memorandum of agreement for integrating and flight testing an Air Force high-resolution radar in a Navy P-3A patrol aircraft. If this effort is successful, as many as six of these aircraft on loan to the Customs Service will provide capability closely resembling the capabilities of Air Force AWACS and Navy E-2C radar aircraft. This action would free DOD

resources for pursuit of their primary missions and, at the same time, would give the Customs Service vastly superior equipment to cope with drug smugglers. These examples confirm the growth of the "posse" and its effectiveness.

Public Law 97-86 does not limit military assistance to enforcement of drug laws. Although the situation in south Florida promulgated the new law, military assistance is available to Federal, state and local agencies in their efforts to enforce any laws. Examples of such assistance include requests by local police for military gas masks during civil disturbances and hangar space and support at McClellan Air Force Base, California, for aircraft flown by the California Highway Patrol and the Sacramento County sheriff's department. And, since more than 5,000 Federal, state, and local enforcement agencies are potential customers for vital military resources, civilian agencies can help smooth the process.⁸

Requests by civilian authorities for assistance from military agencies should be widely coordinated with other local agencies, especially legal experts and advisors. Coordination in this area would serve a twofold purpose. First, it would preclude filing requests for activities prohibited under Posse Comitatus and other applicable laws in the military approval/disapproval system. This system stretches as far as the Secretary of Defense for certain resources, and, even though the Air Force has requested lower approval/disapproval authority, the present system is frequently bogged down with requests prohibited under

current Federal laws. Second, it could lead to alternate sources of assistance not constrained by Federal laws or requirements for reimbursement. One possible source is the National Guard, which operates under state control when it is not assigned to Federal service. In its capacity as a state organization, the Guard is not subject to restrictions under Posse Comitatus or Public Law 97-86, and, if state laws permit, it may become even more directly involved in law enforcement than the active-duty military.⁹ Other Federal agencies may also have the needed resources unfettered by most of the restrictions that apply to the military. Dr. Lawrence J. Korb, Assistant Secretary of Defense for Manpower, Reserve Affairs, and Logistics, referred to these restrictions in a hearing of the Senate Appropriations Committee, Subcommittee on Treasury, Postal Service and General Government, on 10 September 1983:

The Defense Department is contributing to the anti-drug effort to the maximum extent possible under the current law, and under the resource and military preparedness constraints with which we must abide...The considerations of military preparedness and reimbursement must affect all our decisions. National security cannot be undermined as the Defense Department meets its responsibilities under the law...The combination of skilled civilian drug enforcement officials and military personnel, working together in an ever-improving operational system, will enable our nation to win the war on drugs.

The above examples provide ample evidence that Air Force assistance to civilian law enforcement officials has only recently evolved from almost total abstinence to a rapidly expanding commitment to combat the national crime problem. Orienting the Air Force population to this new mission has

required some special efforts, such as the activities of the Civil Law Enforcement Support Steering Group and Air Force liaison personnel at the NNBIS program office and various regional centers. As the nation increases its efforts against the growing crime problem, the Air Force will also increase its efforts consistent with public law and official directives. The men and women of the United States Air Force are proud of their support to this vital program.

FOOTNOTES

¹Although not legally bound by the restrictions of the act, Navy Department regulations directed Navy and Marine Corps personnel to comply with it.

²18 U.S.C. 1385, "Posse Comitatus Act."

³10 U.S.C. 371-378, 2576, 331-334, 377.

⁴Includes the dog and a military handler. Restrictions involve the handler's participation in law enforcement activities.

⁵See Department of Defense Directive 5525.5, "DOD Cooperation with Civilian Law Enforcement Officials," Enclosure 5, March 22, 1982; Air Force Regulation 125-4, "Cooperation with Civilian Law Enforcement Officials," 31 January 1983.

⁶Compiled from internal Air Force Quarterly reports, RCS DD-M(Q) 1595.

⁷Ibid. Also a statement by Dr. Lawrence J. Korb, Assistant Secretary of Defense for Manpower, Reserve Affairs, and Logistics to the Senate Appropriations Committee, Subcommittee on Treasury, Postal Service and General Government, 10 September 1983.

⁸Federal Bureau of Investigation, Public Affairs Office.

⁹Statement by Lieutenant General Emmett H. Walker, Jr., Chief, National Guard Bureau, to the Committee on Government Information, Justice and Agriculture, 19 May 1983.

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